

The Honorable Marsha J. Pechman

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

STUART O'FARRELL,

Plaintiff,

Case No. 2:17-CV-00637

VS.

PARKER, SMITH & FEEK, INC.,

Defendant.

STIPULATED MOTION AND PROTECTIVE ORDER

Hearing Date: May 11, 2018

Plaintiff Stuart O'Farrell and Defendant Parker, Smith & Feek, Inc., by and through their respective counsel of record, hereby move pursuant to Federal Rule of Civil Procedure (26)(c) for entry of this Stipulated Protective Order:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, commercially valuable or private information for which special protection may be warranted. Disclosure of such confidential information may cause financial or competitive harm to one or both parties. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited

1 information or items that are entitled to confidential treatment under the applicable legal
2 principles, and it does not presumptively entitle the parties to file confidential information under
3 seal.

4 2. **DESIGNATED MATERIAL**

5 “Designated Material” shall include the documents, tangible items, or testimony
6 produced, elicited, or otherwise exchanged in this action which the party producing or disclosing
7 such material (the “Designating Party”) designates as “Confidential” or “Highly Confidential –
8 Attorneys’ Eyes Only.” Designated Material may include, but is not limited to, names and
9 contact information of customers and employees; contracts and agreements with customers and
10 employees; personnel identifier information related to non-parties; information maintained as
11 confidential during the normal course of business related to sales, pricing, revenue, strategy and
12 other commercial interests.

13 2.1 Designated Material marked “Confidential” shall include any document, file,
14 portion of file, transcribed testimony or other material that the Designating Party in good faith
15 reasonably believes comprises confidential information related to customers, employees,
16 commercial interests, or other information that could cause commercial, professional, or personal
17 harm through disclosure.

18 2.2 Designated Material marked as “Highly Confidential – Attorneys’ Eyes Only”
19 shall include any document, file, portion of file, transcribed testimony or other material that the
20 Designating Party in good faith reasonably believes comprises trade secrets or other competitive
21 sensitive confidential information, financial or other commercial or personally sensitive
22 information that requires such heightened protection. Designated Material may be designated
23 “Highly Confidential – Attorneys’ Eyes Only” only if the Designating Party believes in good
24 faith that designation as “Confidential” will not provide adequate protection.

1 3. SCOPE

2 The protections conferred by this Order cover not only Designated Material (as defined
3 above), but also (1) any information copied or extracted from Designated Material; (2) all copies,
4 excerpts, summaries, or compilations of Designated Material; and (3) any testimony,
5 conversations, or presentations by parties or their counsel that might reveal Designated Material.
6 However, the protections conferred by this Order do not cover information that is in the public
7 domain or becomes part of the public domain through trial or otherwise.

8 4. ACCESS TO AND USE OF DESIGNATED MATERIAL

9 4.1 Basic Principles. A receiving party may use Designated Material that is disclosed
10 or produced by another party or by a non-party in connection with this case only for prosecuting,
11 defending, or attempting to settle this litigation. Designated Material may be disclosed only to
12 the categories of persons and under the conditions described in this Order. Designated Material
13 must be stored and maintained by a receiving party at a location and in a secure manner that
14 reasonably ensures that access is limited to the persons authorized under this Order.

15 4.2 Disclosure of “Confidential” Information or Items. Unless otherwise ordered by
16 the Court or permitted in writing by the Designating Party, material designated as “Confidential”
17 may be disclosed only to the following persons:

- 18 (a) the receiving party;
- 19 (b) the receiving party’s counsel of record in this action, as well as employees
20 of counsel to whom it is reasonably necessary to disclose the information for this litigation;
- 21 (c) the officers, directors, and employees (including in house counsel) of the
22 receiving party to whom disclosure is reasonably necessary for this litigation;

(d) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (**Exhibit A**);

(e) the Court, court personnel, and court reporters and their staff;

(f) copy or imaging services retained by counsel to assist in the duplication of material, provided that counsel for the party retaining the copy or imaging service not to disclose any Designated Material to third parties and to immediately return all originals and copies of any Designated Material;

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (**Exhibit A**), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Designated Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order; or

(h) the author or recipient of a document containing the information or anyone shown on the document as having received it in the ordinary course of business.

4.3 Disclosure of “Highly Confidential – Attorneys’ Eyes Only” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, material designated as “Highly Confidential – Attorneys’ Eyes Only” may be disclosed only to the following persons:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (**Exhibit A**);

(c) the Court, court personnel, and court reporters and their staff;

(d) copy or imaging services retained by counsel to assist in the duplication of material, provided that counsel for the party retaining the copy or imaging service not to disclose any Designated Material to third parties and to immediately return all originals and copies of any Designated Material;

(e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (**Exhibit A**), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Designated Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order;

(f) the author or recipient of a document containing the information or anyone shown on the document as having received it in the ordinary course of business; or

4.4 Filing Designated Material. Before filing Designated Material or discussing or referencing such material in court filings, the filing party shall confer with the Designating Party to determine whether the Designating Party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1 5. **DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
3 or non-party that designates information or items for protection under this agreement must take
4 care to limit any such designation to specific material that qualifies under the appropriate
5 standards. The Designating Party must designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify, so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not
8 swept unjustifiably within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose
11 (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary
12 expenses and burdens on other parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it designated
14 for protection do not qualify for protection, the Designating Party must promptly notify all other
15 parties that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
17 (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
18 disclosure or discovery material that qualifies for protection under this Order must be clearly so
19 designated before or when the material is disclosed or produced.

20 (a) Information in documentary form: (*e.g.*, paper or electronic documents
21 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
22 proceedings), the Designating Party must affix the words "CONFIDENTIAL" or "HIGHLY
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains Designated
24 Material. If only a portion or portions of the material on a page qualifies for protection, the

1 Designating Party also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 (b) Testimony given in deposition or in other pretrial proceedings: the parties
4 and any participating non-parties must identify on the record, during the deposition or other
5 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
6 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
7 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
8 transcript, or exhibits thereto, as Designated Material. Prior to the expiration of the fifteen-day
9 period, the entire deposition transcript shall be treated as “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY.” If a party or non-party desires to protect Designated Material at
11 trial, the issue should be addressed during the pre-trial conference.

12 (c) Other tangible items: the Designating Party must affix in a prominent
13 place on the exterior of the container or containers in which the information or item is stored the
14 word “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
15 If only a portion or portions of the information or item warrant protection, the Designating Party,
16 to the extent practicable, shall identify the protected portion(s).

17 5.3 Failures to Designate. If timely corrected, an inadvertent failure to designate
18 qualified information or items does not, standing alone, waive the Designating Party’s right to
19 secure protection under this Order for such material. Upon receiving timely correction of a
20 designation, the receiving party must make reasonable efforts to ensure that the material is
21 treated in accordance with the provisions of this Order.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
24 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
2 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
3 challenge a confidentiality designation by electing not to mount a challenge promptly after the
4 original designation is disclosed.

5 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
6 regarding confidential designations without Court involvement. Any motion regarding
7 confidential designations or for a protective order must include a certification, in the motion or in
8 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
9 conference with other affected parties in an effort to resolve the dispute without court action.
10 The certification must list the date, manner, and participants to the conference. A good faith
11 effort to confer requires a face-to-face meeting or a telephone conference.

12 6.3 Judicial Intervention. If the parties cannot resolve a challenge without Court
13 intervention, the Designating Party may file and serve a motion to retain confidentiality under
14 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
15 persuasion in any such motion shall be on the Designating Party. Frivolous challenges, and
16 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
17 on other parties) may expose the challenging party to sanctions. All parties shall continue to
18 maintain the material in question as confidential until the court rules on the challenge.

19 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
20 LITIGATION

21 If a party is served with a subpoena or a court order issued in other litigation that compels
22 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that party must:

24 (a) promptly notify the Designating Party in writing and include a copy of the
subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Designated Material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Designated Material to any person or in any circumstance not authorized under this Order, the receiving party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as **Exhibit A**.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all Designated Material to the producing party, including all copies, extracts

1 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
2 destruction.

3 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
4 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
5 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
6 work product, even if such materials contain Designated Material.

7 The confidentiality obligations imposed by this Order shall remain in effect until a
8 Designating Party agrees otherwise in writing or a court orders otherwise.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED this 11th day of May, 2018.
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13 SEBRIS BUSTO JAMES

14 s/ Darren A. Feider

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19 Attorneys for Plaintiff

1 PURSUANT TO STIPULATION, IT IS SO ORDERED
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3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
4 documents in this proceeding shall not, for the purposes of this proceeding or any other
5 proceeding in any other court, constitute a waiver by the producing party of any privilege
6 applicable to those documents, including the attorney-client privilege, attorney work-product
7 protection, or any other privilege or protection recognized by law.
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9 DATED: May 14, 2018
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11 
12 Marsha J. Pechman
13 Marsha J. Pechman
14 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of _____ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature: